

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

RICHARD K. SHAW, M.D.
3480 Harbor Drive
Atwater, CA 95301

Physician's and Surgeon's
Certificate No. G-6621

Respondent.

No. 08-93-29335

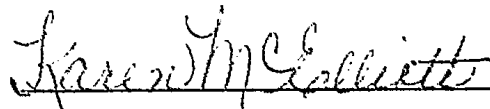
OAH No. N-9412157

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Medical Board of California as its
Decision in the above-entitled matter.

This Decision shall become effective on July 21, 1995.

IT IS SO ORDERED June 22, 1995.


KAREN MCELLIOTT, Chair
Panel B

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PROPOSED DECISION

On May 1, 1995, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Mara Faust, Deputy Attorney General, represented the complainant.

There was no appearance by or on behalf of respondent Richard K. Shaw, M.D.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Complainant Dixon Arnett is the Executive Director of the Medical Board of California ("the Board") and filed the Accusation solely in his official capacity.

Richard K. Shaw, M.D. ("respondent") was served with the Accusation by certified mail on December 2, 1994 at his address of record with the Board, as set forth in the caption above. Respondent did not sign and return the blank form Notice of Defense which was sent to him with the Accusation; rather, complainant was sent a letter dated December 7, 1994 from Fran Bartelt, Deputy Public Conservator, Merced County, which explained that respondent was placed on a probate conservatorship in May 1994. Said letter was treated by the Board as a Notice of Defense filed on behalf of respondent.

Notice of the date, time and place of hearing was served on respondent by certified mail on January 20, 1995 at the address listed in the caption above, and on Fran Bartelt, Deputy Public Conservator, at the following address: 708 W. 20th Street, Suite 6, Merced, California 95344.

Despite proper service of the Notice of Hearing respondent did not appear and was not otherwise represented at hearing. Upon proof of compliance with Government Code sections 11505 and 11509, the matter proceeded as a default pursuant to Government Code section 11520.

II

The Accusation was amended at hearing as follows:

Paragraph 10, page 4, line 8: delete "#AM9201998" and substitute "#AM113206."

III

On March 15, 1961, respondent was issued physician's and surgeon's certificate No. G-6621 by the Board. Said certificate expired on January 31, 1995 and had not been renewed as of the date of hearing. Furthermore, respondent has not complied with the Continuing Medical Education requirements for license renewal and is ineligible for renewal of his physician's and surgeon's certificate until such time as the required hours are documented to the Division of Medical Quality.

IV

Business and Professions Code section 2220 permits the Division of Medical Quality of the Board to take action against all persons guilty of violating the provisions of the Medical Practice Act (Business and Professions Code section 2000 et. seq.).

Business and Professions Code section 2234 provides, in pertinent part, that the Division of Medical Quality shall take action against any licensee who is charged with unprofessional

conduct. Unprofessional conduct is defined therein to include, but not be limited to: (a) violating or attempting to violate, directly or indirectly, any provision of the Medical Practice Act.

Business and Professions Code section 2236(a) defines unprofessional conduct to include the conviction of any offense substantially related to the qualifications, functions or duties of a physician and surgeon. Business and Professions Code section 2236(b) permits the Division of Medical Quality to inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if such conviction is an offense substantially related to the qualifications, functions or duties of a physician and surgeon.

Business and Professions Code section 2239 provides in pertinent part that the use of alcoholic beverages in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely, or more than one misdemeanor or any felony involving the use of alcohol, constitutes unprofessional conduct.

V

On November 21, 1991, in case no. AM106288, before the Merced County Municipal Court, respondent was convicted upon his plea of no contest of a violation of Vehicle Code section 23152(a) (driving under the influence of an alcoholic beverage and/or drug), a misdemeanor.

The facts and circumstances underlying the conviction were that on September 3, 1991, respondent was observed by a police officer of the Atwater Police Department to be driving a vehicle that straddled the center lane several times. As a result, respondent was arrested for driving under the influence of alcohol and was given a breath test with a blood alcohol result of .27 percent.

VI

By reason of the facts set forth in Finding V, respondent was convicted of a crime which is substantially related to the qualifications, functions and duties of a physician and surgeon within the meaning of Business and Professions Code section 2236 and used alcoholic beverages in such a manner as to be dangerous to himself and to the public within the meaning of Business and Professions Code section 2239.

VII

As a consequence of his conviction as set forth in Finding V, respondent was placed on probation for 36 months, was ordered to pay fines and fees of \$1,500 and was ordered to continue in an in-patient treatment program for substance abuse. Respondent was further ordered to enroll in a "Level I Alcohol Abuse Program" by July 31, 1992, and to refrain from driving a vehicle with any measurable amount of alcohol in his blood. Respondent's driving privileges were restricted for 90 days effective July 31, 1992 (i.e., driving permitted only to and from work and to attend a substance abuse program).

Respondent did not comply with the terms of his criminal probation, in that he failed to participate in an approved alcohol diversion program, and he was arrested on June 16, 1992 for driving while under the influence of alcohol and/or drugs while having a blood alcohol level of .08 percent or above.

VIII

On May 13, 1993, in case no. AM113206, before the Merced County Municipal Court, respondent pled guilty to a violation of Vehicle Code section 23103.5 (alcohol related reckless driving) and Vehicle Code section 20002(A) (hit and run), both misdemeanors.

The facts and circumstances underlying the convictions were that on June 16, 1992, respondent backed his car out of a parking space in a parking lot and hit the passenger side door of another car, causing damage. Respondent did not remain at the scene of the accident. Respondent was thereafter arrested for driving under the influence of alcohol and/or drugs and was given a breath test with a blood alcohol level of .10 percent.

IX

By reason of the facts set forth in Finding VIII, respondent was convicted of crimes which are substantially related to the qualifications, functions and duties of a physician and surgeon within the meaning of Business and Professions Code section 2236 and used alcoholic beverages in such a manner as to be dangerous to himself and to the public within the meaning of Business and Professions Code section 2239.

X

As a consequence of the convictions set forth in Finding VIII, respondent was placed on probation for 24 months and was ordered to pay a fine of \$600. The court reserved jurisdiction regarding the issue of restitution.

XI

By reason of the facts set forth in Findings V through X above, respondent has engaged in unprofessional conduct within the meaning of Business and Professions Code sections 2234, 2236 and 2239.

XII

Respondent contacted the Physician's Diversion Program in October 1991 after his first arrest for driving under the influence of alcohol in September 1991. Respondent was accepted for formal participation in the Diversion Program on January 10, 1992. Records of the Diversion Program indicate that respondent entered a number of in-patient treatment programs for substance abuse but had numerous relapses. Respondent also did not attend required meetings regularly and did not give urine samples when requested to do so.

As part of his participation in the Diversion Program, respondent was evaluated by Dr. L. Otterness, a psychiatrist, on February 13, 1992. Dr. Otterness diagnosed respondent as having bipolar affective disease I, possibly hypomanic phase, and alcoholism. It was the recommendation of the Diversion Evaluation Committee that respondent cease the practice of medicine while in the Diversion Program.

By letter dated August 5, 1993, respondent was informed of the Diversion Evaluation Committee's decision to terminate him from the Diversion Program effective July 15, 1993. Respondent was further informed that the Diversion Evaluation Committee was in agreement that respondent was "a danger to practice medicine" due to his failure to comply with his Diversion Agreement. By letter dated August 12, 1993, respondent informed Beverly Stalder, Acting Recovery Program Manager, that he intended to retire from the practice of medicine; he enclosed with the letter his physician's and surgeon's certificate.

XIII

By order of the Superior Court of California, County of Merced, dated June 29, 1994, respondent was placed on a probate conservatorship of his person and estate, with the Merced County Public Conservator named as respondent's conservator. Said conservatorship was continuing as of the date of hearing.

XIV

There was no evidence offered by or on behalf of respondent in mitigation or extenuation, and no evidence offered to establish any rehabilitation on the part of respondent.

XV

The prayer for relief in the Accusation herein did not contain a request for costs of investigation and prosecution of this matter incurred by the Board. Furthermore, the Accusation was not amended at hearing to request costs, and no evidence was submitted on this issue.

DETERMINATION OF ISSUES

I

Clear and convincing evidence established cause for revocation of respondent's physician's and surgeon's certificate pursuant to Business and Professions Code sections 2220, 2234(a), 2236 and 2239 by reason of Findings V, VI, VII, VIII, IX, X and XI.

II

The matters set forth in Finding XII, XIII, and XIV are considered in making the Order below.

III

No order imposing costs of investigation and prosecution of this matter is made by reason of Finding XV.

ORDER

Physician's and surgeon's certificate No. G-6621 issued to respondent Richard K. Shaw, M.D. is revoked pursuant to Determination of Issues I.

Dated: May 15, 1995

Catherine B. Frink
CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

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of the State of California
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Deputy Attorney General
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6
7 Attorneys for Complainant

8 BEFORE THE
DIVISION OF MEDICAL QUALITY
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA
11

12 In the Matter of the) No. 08-93-29335
Accusation Against:)
13) ACCUSATION
RICHARD K. SHAW)
14 3480 Harbor Drive)
Atwater, CA)
15)
Physician and Surgeon)
16 Certificate No. G-6621)
Respondent.)
17)
18

19 DIXON ARNETT, complainant herein, charges and alleges
20 as follows:

21 1. He is the Executive Director of the Medical Board
22 of California, (hereinafter the "Board") and makes these charges
23 and allegations solely in his official capacity.

24 2. On or about March 15, 1961, the Board issued to
25 respondent physician's and surgeon's certificate number G-6621.
26 Said certificate is in current status with an expiration date of
27 January 31, 1995.

STATUTES

3. Section 2220 of the Business and Professions Code^{1/} provides that the Division of Medical Quality of the Board (hereinafter "the Division") may take action against all persons guilty of violating the provisions of the Medical Practice Act (Bus. & Prof. Code, § 2000 et seq.).

4. Section 2234 provides, in pertinent part, that the Division shall take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct is defined therein to include, but not be limited to: (a) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of the Medical Practice Act.

5. Section 2236 states as follows:

(a) the conviction of any offense substantially related to the qualifications, functions or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The division may inquire into the circumstance surrounding the commission of the crime in order to fix the degree of discipline or to determine if such conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a physician and surgeon is deemed to be a conviction within the meaning of this section.

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1. All statutory references are to the Business and Professions Code unless otherwise indicated.

1 6. Section 2239 of the Code provides as follows:

2 (a) The use or prescribing for or administering to
3 himself or herself, of any controlled substance; or the
4 use of any of the dangerous drugs specified in Section
5 4211, or of alcoholic beverages, or in such a manner as
6 to be dangerous or injurious to the licensee, or to any
7 other person or to the public, or to the extent that
8 such use impairs the ability of the licensee to
 practice medicine safely or more than one misdemeanor
 or any felony involving the use, consumption or self-
 administration of any of the substances referred to in
 this section, or any combination thereof, constitutes
 unprofessional conduct. The record of the conviction
 is conclusive evidence of such unprofessional conduct.

9 (b) A plea or verdict of guilty or a conviction
10 following a plea of nolo contendere is deemed to be a
11 conviction within the meaning of this section. The
12 Division of Medical Quality may order discipline of the
13 licensee in accordance with section 2227 . . . when the
14 time for appeal has elapsed or the judgment of conviction
15 has been affirmed on appeal or when an order granting
16 probation is made suspending imposition of sentence,
17 irrespective of a subsequent order under the provisions
18 of section 1203.4 of the Penal Code allowing such person
19 to withdraw his or her plea of guilty and to enter a plea
20 of not guilty, or setting aside the verdict of guilty, or
21 dismissing the accusation, complaint, information or
22 indictment..

23 FIRST CAUSE FOR DISCIPLINARY ACTION

24 7. On or about November 21, 1991, in case #AM106288
25 before the Merced County Municipal Court, respondent pled no
26 contest to a violation of Section 23152(a) of the California
27 Vehicle Code (driving under the influence of an alcoholic
 beverage and/or drug), a misdemeanor. Respondent was sentenced
 to 36 months probation and ordered to pay a fine of \$1450.00.

 8. The facts underlying the conviction were that on or
 about September 3, 1991, respondent was driving a vehicle that
 straddled the center lane on several occasions. As a result,
 respondent was arrested by the Atwater Police for driving under

1 the influence of alcohol and was given a breath test with a blood
2 alcohol result of .27 percent.

3 9. Respondent's conduct as set forth in paragraphs 7
4 and 8, constitutes unprofessional conduct under Sections 2234(a),
5 2236, and 2239 of the Code and is therefore cause for
6 disciplinary action.

7 SECOND CAUSE FOR DISCIPLINARY ACTION

8 10. On or about May 13, 1992, in case #AM9201998
9 before the Merced County Municipal Court, respondent plead guilty
10 to a violation of Section 23103.5 of the Vehicle Code (alcohol
11 related reckless driving) and Section 20002(A) of the Vehicle
12 Code (hit and run), both misdemeanors. Respondent was sentenced
13 to 24 months of probation and ordered to pay a \$600.00 fine.

14 11. The facts underlying the convictions were that on
15 or about June 16, 1992, respondent backed his car out of a
16 parking space and hit the passenger side door of another car.
17 Respondent was arrested for driving under the influence and was
18 given a breath test with a blood alcohol level of .10 percent.

19 12. Respondent's conduct as set forth in paragraph
20 10, and 11, above, constitutes unprofessional conduct under
21 Sections 2234(a), 2236 and 2239 of the Code and is therefore
22 cause for disciplinary action.


23 WHEREFORE, complainant prays that a hearing be held and
24 that the Division of Medical Quality issue an order,

25 1. Revoking or suspending physician and surgeon
26 Certificate No. G-6621, issued to Richard K. Shaw, M.D.

27 ///

1 2. Taking such other and further action as may be
2 deemed proper and appropriate.

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4 Dated: December 2, 1994

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6 DIXON ARNETT
7 Executive Director
8 Medical Board of California
9 Division of Medical Quality
10 Department of Consumer Affairs
11 State of California

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Complainant